Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
And Billing Format	)	
	)	
National Association of State Utility Consumer	)	CG Docket No. 04-208
Advocates' Petition for Declaratory Ruling	)	
Regarding Truth-in-Billing	)	

COMMENTS OF QWEST CORPORATION, QWEST COMMUNICATIONS CORPORATION, QWEST LD CORP. AND QWEST WIRELESS LLC

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I. INTRODUCTION AND SUMMARY

Qwest Corporation (local exchange carrier), Qwest Communications Corporation and Qwest LD Corp. (both interexchange carriers), and Qwest Wireless LLC (collectively "Qwest") file these comments responding to the Federal Communications Commission ("FCC" or "Commission") *Second Further Notice of Proposed Rulemaking* in the above-captioned proceeding.[1] The Commission should refrain from interjecting regulatory mandates over the format or editorial control of carriers' bills, including requiring the creation of a "government-mandated charge" sections in the bill, as well as standardizing the content of line items. Qwest's position is consistent with its long-standing advocacy and is in line with the communicative

[1] *In the Matter of Truth-in-Billing and Billing Format, National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-*Billing, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 (2005) ("*Second Report and Order*" or "*Declaratory Ruling*" or "*Second Further Notice*" as the text requires), *pets. for review pending sub nom. NASUCA v. FCC*, No. 05-11682, filed Mar. 28, 2005 (11th Cir.).

intention of carriers bills.[2]

There is no disputing that many ways exist for a carrier to truthfully convey a commercial message or for a carrier to bill its customers for a particular product or service.[3] Both common business sense and market imperatives drive such speech. If for no other reason than this, carriers should be given the benefit of the doubt that they strive to communicate with their customers in a truthful manner. Those claiming otherwise should have to prove a specific claim against a specific carrier describing the purported untruthful or misleading statement associated with the claim.

The *Second Further Notice* references some billing formats or descriptive phrases the Commission suggests might be confusing or misleading to consumers.[4] These examples are few in number and they fail to demonstrate a pervasive problem with respect to carrier billing or customer dissatisfaction with that billing. The limited examples cited by the Commission, when compared to the millions of bills issued by carriers across the country every month, argue strongly in favor of addressing misleading or confusing billing practices through the vehicle of

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[2] The last time Qwest filed comments in this proceeding, it did so solely as an interexchange carrier. *See* Comments of Qwest Communications Corporation, dated November 13, 1998; July 16, 1999; September 14, 1999. U S WEST Communications, Inc. filed comments in the same proceeding in its local exchange carrier capacity. *See* Support/Opposition of U S WEST Communications, Inc. to Petitions for Reconsideration, filed Sept. 14, 1999 ("U S WEST Petition for Reconsideration"); Reply Comments, filed Sept. 10, 1999; Petition for Reconsideration, filed July 26, 1999; and Comments to Further Notice, filed July 26, 1999. Qwest's comments here are consistent with the previously-filed advocacy of both carriers.

[3] *See In the Matter of Truth-in-Billing and Billing Format,* First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7499 ¶ 10 (1999) ("*First Report and Order*" or "*First Further Notice*" as appropriate in the text) (as the Commission itself has conceded, "there are typically many ways to convey important information to consumers in a clear and accurate manner").

enforcement and adjudication rather than rulemaking. Qwest urges the Commission to pursue such an approach.

An enforcement approach makes the most sense given the fact that the Commission already regulates carrier billing practices.[5] Moreover, the Commission has interpreted its rules as necessary, holding certain descriptions and practices to be unreasonable.[6] For example, the Commission has articulated appropriate and inappropriate billing practices with respect to universal service charges. Carriers are not free to include administrative costs in line items billing for such charge; line items must be confined to recovering a carrier's universal service charge contribution.[7] Indeed, it was this guidance that prompted in part the filing of the NASUCA Petition.[8] Similarly, in the *Second Report and Order* and the *Second Further Notice*, the Commission provides guidance to carriers regarding the billing of charges where a government association is suggested in a line item charge.[9]

Existing rules and the Commission's interpretative guidance belie the need to regulate carrier billing practices further. No rule amendments prescribing carriers' bill organization or

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[4] *Second Report and Order*, 20 FCC Rcd. at 6461 n. 73 (citing to the NASUCA assertion that the term "TSR Administrative Fee" and "Universal Connectivity Charge" are confusing), 6472-73 ¶ 47.

[5] 47 C.F.R. § 64.2400, *et seq.*

[6] *See, e.g., First Report and Order*, 14 FCC Rcd at 7519 ¶ 43, 7523 ¶ 50, 7526-27 ¶ 55, 7537 ¶ 71. *And see* note 7 below for additional examples.

[7] *In the Matter of Federal-State Joint Board on Universal Service,* Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24979-80 ¶ 54 (2002). *And see* discussion of this guidance in the *Second Report and Order*, 20 FCC Rcd at 6452-53 ¶¶ 8-10, 6458-59 ¶ 23. *And see id.* at 6451 ¶ 6 (identifying another Commission billing clarification regarding the billing for bundled service packages).

[8] *See* Petition for Declaratory Ruling, filed by National Association of State Utility Consumer Advocates, CC Docket No. 98-170, filed Mar. 30, 2004 ("NASUCA Petition").

formatting (*i.e.*, the separation of government "mandated" charges from others) are necessary.[10] Similarly, no rules are required prescribing standardized labels for line items in lieu of truthful language chosen by carriers.

General rulemaking is not an ideal regulatory response to individual bad actors when such rulemaking would intensely involve the government in the billing practices of the entire telecommunications industry. Broad regulatory prescriptions not only interfere with carriers' editorial decisions and marketing prerogatives, but they inevitably increase the cost of goods sold to all purchases. If the Commission is concerned that some carriers employ billing practices at odds with existing rules, the better course is for the Commission to take the matter up with those identified carriers, if necessary through targeted enforcement action.

Should the Commission deem it necessary to provide additional guidance to carriers regarding references to the government in their bills or line item content, beyond the guidelines it has provided to date on these matters, the Commission should consider a "safe harbor" set of standards.[11] Carriers would be educated by that guidance and could craft the format and content of their bills accordingly, understanding that the further they deviated from the Commission's guidance the more they subject themselves to increased regulatory risk.[12]

The *Second Further Notice* also inquires into the propriety of establishing an interstate

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[9] *Second Report and Order,* 20 FCC Rcd at 6459-62 ¶¶ 24-29; *Second Further Notice*, 20 FCC Rcd at 6459-61 ¶¶ 24-26.

[10] *Id.* at 6468-70 ¶¶ 39-40, 6470-73 ¶¶ 43-47 (tentatively concluding that government-mandated charges must appear in separate sections in a carrier's bill).

[11] Indeed, the Commission's "additional clarifications" in the *Second Report and Order* (referenced at ¶ 24; with "additional detail" provided in ¶¶ 26-29) constitute just such guidance.

[12] *Id.* at 6461 ¶ 27 ("Carriers should take great caution in using terms that are most commonly associated with governmental programs to describe other charges that are unrelated to those programs.") (footnote omitted).

rule regarding point of sale disclosures. Qwest opposes any federal action mandating such disclosures not because such disclosures are inappropriate in a sales context, but because such government action is not appropriately compelled absent extraordinary circumstances. The existing record does not support extending settlement terms arrived at between private litigants (such as point of sale disclosures) to the communications industry through general rulemaking. Similar to Qwest's advocacy regarding government-prescribed bill formatting or language requirements, Qwest urges the Commission to limit regulatory intervention in carriers' sales practices to those situations where strong remedial action involving the speech of a carrier is necessary to prevent clear abuses and proven harms to the public.

Qwest's recommendations here align with constitutional principles associated with carrier and customer speech. They also incorporate the pro-competitive and market oriented objectives of the Telecommunications Act of 1996.[13] Supported by the commendable objectives of both legal precedents, the Commission should give Qwest's recommendations serious consideration.

II. A CARRIER'S BILL IS A COMMUNICATION THAT SHOULD BE FREE OF GOVERNMENT REGULATION EXCEPT IN EXTREME CASES

Customer bills are the primary and most important communication between carriers and their customers. The fact that such communications occur routinely reinforces their importance to the relationship. Accordingly, decisions about the look of a carrier's bill should lie with the carrier, within the boundaries of the law, and should not be intensively regulated by the government. A regulatory agency is not as well equipped as a supplier to craft a bill that communicates clearly, meets customer needs and promotes commerce.

[13] "[A] procompetitive, deregulatory national policy framework designed to make available to all Americans advanced telecommunications and information technologies and services by opening

Here, as in 1999, Qwest endorses the comments of former Commissioner Furchtgott-Roth that federal mandates compelling the use in carriers' bills of standardized labels with respect to interstate or international services crosses the line of appropriate regulation and become unsupportable government interference with communications between carriers and their customers.[14] As stated in the Introduction, should the Commission remain wedded to the notion that additional regulation is necessary regarding carrier billing format and language, the most the Commission should do is fashion safe harbor principles around the matter of bill formatting and standardized labeling. Nothing more interventionist or burdensome is necessary.

A. Publication Of Bills Implicates Important Speech Interests

The design, format and content of carriers' bills are all aspects of crafting meaningful communications with customers, and they involve more art than science. Creating bills involves working with professionals in the area of "plain English" communications, as well as choosing visually-pleasing print formatting, and assessing customer reaction through discussions, survey and focus groups. All this activity has a common objective: to determine what the bill should look like or how it should be changed, and whether this promotes the overall carrier-customer experience and relationship.

These billing processes do not lend themselves comfortably to government prescriptions. Indeed the processes highlight the editorial nature of bill creation and the First Amendment

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all telecommunications markets to competition." *See* Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996).

[14] *See* Comments of U S WEST Communications, Inc., CC Docket No. 98-170, filed July 9, 1999. *And see* Dissenting Statement of Commissioner Harold Furchtgott-Roth, *First Report and Order,* 14 FCC Rcd at 7570-71.

protections that append to such carrier-customer communications.[15] The editorial discretion that carriers like Qwest currently enjoy over their bills is not only consistent with sound First Amendment and intellectual property values,[16] but with competitive and consumer interests as well. Indeed, Qwest's ability to achieve its billing objectives has been fostered by a landscape of regulatory minimalism regarding its billing activities. That landscape allows Qwest appropriately to exercise significant editorial control over the format, look and presentation of the bill in a manner that benefits both the company and its customers.[17]

Qwest's billing communications reflect the commitment Qwest brings to maintaining a satisfying business relationship with its customers, as well as fostering fair and equitable commercial practices. Qwest currently processes approximately 126 million bills annually without material customer dissatisfaction. Qwest's billing activities are constantly tested against management objectives and customers needs and expectations. Qwest has spent much time and money on the look and feel of its bill, including customer focus groups and management-dedicated bill review teams. Qwest provides varied billing vehicles and options as appropriate for its large and small business customers and its mass market residential customers.

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[15] The Commission has acknowledged that there are First Amendment implications to government mandates regarding carrier bills. *See First Report and Order*, 14 FCC Rcd at 7530-32 ¶¶ 61-63. Still, the Commission has held that it does not violate constitutional principles for the Commission to adopt standardized labeling recommended to it by an industry-consumer advocate group. *Id.* at 7523-27 ¶¶ 50-55. It is not clear that the Commission's analysis would be shared by a reviewing court. Thus the fact that, in the *Second Further Notice*, comments are sought on whether government-mandated labeling satisfactorily addresses both legal and policy considerations associated with carrier speech is a sound step. *Second Further Notice*, 20 FCC Rcd at 6471-72 ¶ 45.

[16] A carrier's bill format could be protected by copyright, patent or trademark law.

[17] Some Qwest states have regulations regarding billing. However, those regulations do not generally affect the fundamental format of the bill. The regulations primarily focus on

For all of the above reasons, it is clear that the current minimalist regulatory approach is the correct one, given that there are "typically many ways to convey important information to consumers in a clear and accurate manner."[18] The fact that the content of carriers bill may differ, and that some individuals might be confused about phrasing in specific carrier bills,[19] does not demonstrate a substantial federal problem requiring federal government intervention to protect the public interest.

Given the close connection between the content of Qwest's bills, Qwest's marketing efforts, and its efforts to promote a positive customer experience, it is critical that carriers such as Qwest be given the broadest latitude to craft bills in a manner that addresses different customer segments and their needs and expectations, especially as these needs and expectations change over time. The manner in which carrier bills, the options it provides with respect to access to billing information, the ability it offers to manipulate that information, the customized features it makes available are all economic, competitive and communicative issues that play an important part in helping consumers chose which carrier they select as their supplier.

The government should extend carriers the benefit of the doubt that the formatting of their bills and content of the speech contained therein is truthful and lawful, absent proof to the contrary.[20] Persons challenging specific language in particular carrier bills should be expected to prove allegations of unfair or deceptive language or practices. Should challengers be successful,

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differentiating between regulated and nonregulated services and making clear which services can result in a denial of local service and which cannot.

[18] *First Report and Order*, 14 FCC Rcd at 7499 ¶ 10.

[19] *See* note 35, below.

[20] *Compare Second Report and Order*, 20 FCC Rcd at 6468 n.113 (referencing Verizon's filed comments to the effect that the current record "contains no credible evidence that CMRS

prescriptions regarding formatting or language might be appropriate as a remedial measure. Such prescriptions should be the exception, however, rather than the rule.

Qwest does not suggest that the Commission has no role in the area of carriers' billings to their customers. As discussed above, the Commission already regulates carrier billing. Requiring bills to be truthful and not deceptive is certainly an appropriate regulatory expectation and a solid benchmark for enforcement activity. However, within the realm of "truthful" speech, the primary voice behind the look, feel and content of a carrier's bill should remain that of the carrier, not the government. Only in those rare cases where the speech of a particular carrier exceeds the bounds of reasonableness due to its misleading or untruthful content should the government intervene.

B. Government Action Should Not Be Taken to Segment Government Charges Into A Separate Bill Section

The *Second Further Notice* seeks information on the differentiation on a carrier's bill between charges that might be government "mandated" and those that are not. As to the former, the Commission posits that when "amount[s] listed [are] remitted directly to a governmental entity or its agent," the charges being billed might appropriately be characterized as "government-mandated."[21] In contrast, the Commission suggests that "non-mandated charges only would be composed of fees collected by carriers to go to the carrier's coffers, and which are not directly related to any regulatory action or government program."[22] The *Second Further Notice* "tentatively conclude[s] that where carriers choose to list charges in separate line items on

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providers fail to provide consumers with clear and non-misleading information they need to make informed choices"). Qwest asserts that the same is true generally of carriers bills.

[21] *Second Further Notice*, 20 FCC Rcd at 6470 ¶ 41.

[22] *Id.*

their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges."[23] It then solicits comment on how the Commission should define "mandated" and "non-mandated" charges for purposes of bill segregation.[24]

The Commission inquires whether the term "government mandated" charges should be confined to charges or amounts "that a carrier is required to collect directly from customers, and remit to federal, state or local governments." It presumes that under such definition mandated charges "would include state and local taxes, federal excise taxes on communications services, and some state E911 fees."[25] However, the assumption that the phrase "government mandated" would permit recovery of all local taxes that are currently collected by carriers is not entirely correct. Different phrasing may be necessary to accomplish this objective.

As the Commission contemplates line item phrasing that it finds acceptable or appropriate, it should therefore modify the phrase "government mandated" and choose something similar to the phrases "government-based charges" or simply "government charges." These phrasings would allow carriers to include not only those charges mandated by the government to be collected directly against end users and remitted to the government, but also those charges

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[23] *Id.* at 6468-69 ¶ 39.

[24] *Id.*

[25] *Id.* at 6469-70 ¶ 40 (emphasis added; footnote omitted). The *Second Report and Order* is not as clear as it might be regarding the difference between "government-mandated" and "government authorized" or "government permitted" charges, sometimes suggesting no material differences between the categories. *See Second Report and Order*, 20 FCC Rcd at 6449 ¶ 1, 6454 ¶ 13, 6458-59 ¶ 22, 23 and 6459 n.60. Other times, however, the *Notice* suggests the terms are different in nature. *Id.* at 6460-61 ¶ 26, 6469-70 ¶ 40. Still other times, the *Notice* suggests that the term "mandated" might allow for flexible interpretation. *Id.* at 6469 n.118 ("Government authorized but discretionary charges only could include those costs that are directly related to the specific governmental program or action that the line item purports to recover." Here the Commission references ¶ 26 (*id.* at 6460-61) which seems at odds with the sentence in question.).

where carriers pay up front for taxes or fees but are permitted to recoup those remittances from end users should they chose.[26]

While the *Second Further Notice* seeks comment on a new regulation pertaining to bill formatting and the creation of bill sections, formal rules in this area are unneeded in light of the Commission's contemporaneous "clarification" of such matters already provided in the *Second Report and Order*. There the Commission provides additional guidance regarding billing government versus non-government charges:

- It "reiterate[d] that it is a misleading practice for carriers to state or imply that a charge is required by the government when it is the carriers' business decision as to whether and how much of such costs they choose to recover directly from consumers through a separate line item charge."[27]

- The Commission found, "[t]his prohibition includes not only misleading statements or descriptions, but also placement of the charge on the bill in such a way as to lead a reasonable consumer to believe that the charge has been mandated by the government."[28]

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[26] Comments on this matter were filed in the earlier *Further Notice* portion of this proceeding. *See* Comments of the United States Communication Association, dated July 14, 2004 (arguing that under the NASUCA Petition characterization of "government mandated" required both the right to recover from end users, as well as the specific amount of the recoverable charge, as having been mandated by the respective government entity and opposing such a construction or mandate. The filing did note that NASUCA had not focused on "taxes" as chargeable items to any significant extent.). Those comments brought particular attention to the matter of gross receipt taxes, right-of-way taxes, and local excise taxes as requiring at a minimum a "government sanctioned" (or authorized") placement on the bill. The filing argued that such construction was supported by actions of the "Commission, courts of law and other government agencies [that] have long *permitted* or sanctioned the use of pass-on or surcharge mechanisms for carriers to recover expenses incurred for gross receipts, right-of-way and other state and local excise taxes [that] certain state and local jurisdictions impose, often exclusively and discriminatorily, on members of the telecommunications industry."

At this time, Qwest takes no position on whether "property taxes" are appropriately included in a bill section dealing with government-mandated or permitted tax recoveries. *See* the Commission's inquiry on this matter in the *Second Further Notice*, 20 FCC Rcd at 6472 ¶ 47. As a matter of its own commercial practices, however, Qwest does **not** seek recovery of these taxes as an identifiable line item on its bills.

[27] *Second Further Notice*, 20 FCC Rcd at 6461 ¶ 27.

[28] *Id.*

- Finally, the Commission stated that "the burden rests upon the carrier to demonstrate that the charge imposed on the customer accurately reflects the specific governmental program fee it purports to recover. This burden is satisfied if the carrier demonstrates that the line item charge in question falls within any maximum level allowed by the government for its recovery."[29]

The Commission has already provided sufficient guidance in this area. Having done so, there is no need for more formal rules on this matter.

C. Standard Labeling For Charges Should Not Be Prescribed By The Government

In the *First Report and Order*, the Commission declined to adopt standard labeling for charges associated with federal regulation. Instead, the Commission "encourage[d] consumer and industry groups to come together, conduct consumer focus groups, and propose jointly to the Commission standard labels for these line item charges."[30] These findings were sound. In light of the clarifications contained in the *Second Report and Order,* the Commission should not reverse its prior findings by itself taking on the role of prescribing standardized labeling for charges associated with federal regulatory action.

As none can dispute, many truthful phrasings can be employed to describe products or billed items.[31] In most cases, regulators are not the best equipped parties to assess whether one

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[29] *Id.* at 6462 ¶ 29 ("carriers should be able to demonstrate with probative accounting documentation and other relevant evidence that the amounts collected for specific governmental programs and fees equals the amount submitted to the government or its agent for that program").

[30] *First Report and Order*, 14 FCC Rcd at 7525-26 ¶ 54.

[31] *See* note 3, above. In 1998, U S WEST filed comments in this proceeding that included the text quoted below. Qwest repeats it remains a sound example of the variety of ways in which truthful billing about a single item can occur without deception or unfairness:

> An example from another industry should help in clarifying this matter. A customer goes to a retail establishment and purchases a package of men's socks for $15.95. Depending on the store and the register where the customer paid for

term is materially "better" than another or substantially inferior. For example, the term "Federal Universal Service" charge -- which was the Commission's proposed language in its first *Truth-in-Billing Order*[32] -- is not more or less accurate than the language that Qwest has incorporated in some of its bills, which is "Federal Universal **Service** Fund."[33] (Emphasis added.)

Differences in bill formats and nomenclature are not bad. Common service terms and descriptions are not necessary for bills to be truthful and might operate to depress ingenuity and innovation associated with competition. This could be an even more significant problem if "standardization" got in the way of "easy to do business with" billing.

Bills rendered to the public are done so by private companies not government agencies and the possibility exists that many different phrases might be utilized to describe very similar billing items. Customers currently have information on their bills, as a matter of carrier practice

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> the merchandise, the subsequent billing statement might read: Men's Apparel, Men's Hosiery, Sundries, Men's Suits, Men's Casual Wear or Women's Cosmetics. If the person paying the bill is the same person who purchased the socks, whatever service "description" is provided will, along with the $15.95 price, trigger in the mind of the bill payor what the commercial transaction involved, even though only a single service description is factually accurate (i.e., Men's Hosiery) and at least two of them could be considered "misleading" (i.e., Men's Suits (associated with a $15.95 item) and Women's Cosmetics). If the person paying the bill is not the person who made the purchase, there might be no factual comprehension (let alone confusion) about the billing because the individual would have no knowledge whether what was purchased was Women's Cosmetics, Sundries or something associated with Men's Apparel. The only billing description that might cause "confusion" for the bill payor in this situation might be a transactional description of "Men's Suits" associated with a $15.95 item. This confusion might get resolved by the bill payor discussing the transaction with the buyer or through a call to the store for clarification.

Comments of U S WEST Communications, Inc., CC Docket No. 98-170, filed Nov. 13, 1998 at 18-19.

[32] *Further Notice*, 14 FCC Rcd at 7537 ¶ 71.

and Commission rules,[34] that advises them who they should contact with billing questions should the customer find something on their bill that they cannot understand or reconcile. While the lack of uniformity among carriers bills might be confusing to some customers,[35] that confusion in and of itself is not sufficient for the government to intervene in the formatting or content decisions of carriers across the country absent specific findings of unfairness, unreasonableness, or deception.

Finally, not only should the Commission refrain from prescribing labeling associated with carrier line-item charges, it should permit carriers to combine charges under a single heading, provided carriers do not misrepresent what the line item seeks to recover and give the customer an opportunity to get a more specific breakdown of the total line item charge should the customer

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[33] *And compare First Report and Order*, 14 FCC Rcd at 7523-24 ¶ 51, referencing the phrase "Federal Universal Service Fee." *See also* Comments of A&T Corp. at 4-5; Sprint at 1-2; MCI at 9, filed herein July 9, 1999.

[34] 47 C.F.R. § 64.2401(d).

[35] In its *Second Further Notice* at note 113 (20 FCC Rcd at 6468), the Commission cites to paragraphs 16 and 24 in its *Second Report and Order* in support of its assertion that "consumers still experience a tremendous amount of confusion regarding their bills." *Id.* at 6468-69 ¶ 39. The paragraphs it cites contain evidence of an increased number of customer complaints regarding carrier billing (paragraph 16) and assertions by state regulatory and consumer advocates regarding professed customer confusion (paragraphs 16, 24). The Commission does acknowledge that increased complaints with respect to wireless bills, for example, could well be reflective of the fact that there are more wireless customers than in the past (paragraph 16), but it essentially dismisses that observation by claiming that the complaints remain "demonstrative of consumer confusion and dissatisfaction with current billing practices" (paragraph 16). Later (in paragraph 24) the Commission asserts there is "supplied evidence that there is considerable consumer confusion regarding telephone bills."

Given the number of bills carriers across the communications industry render (upwards of many millions), Qwest believes that any "evidence" in the record regarding customer confusion or dissatisfaction constitutes less than a significant number (in the statistical sense) of objections to carriers billings. Of course, any rulemaking action taken by the Commission would be directed precisely at general carrier billing activity, not those "some carriers [that] may be disguising rate increases in the form of separate line item charges and implying that such charges

request it.[36]

III. THE COMMISSION SHOULD TAKE NO ACTION REGARDING POINT OF SALE DISCLOSURES

The *Second Further Notice* requests comment on point of sale disclosures.[37] Qwest does not oppose point of sale disclosures. It makes them in many of its marketing and sales efforts.[38] Qwest does oppose, however, the *Second Further Notice* proposal regarding such disclosures because: (a) the existing record fails to demonstrate that communications carriers do not provide such disclosures on a widespread basis; and (b) the *Second Further Notice* proposes imposing what are clearly private-litigation remedial measures on carriers generally, in the absence either of evidence of widespread carrier abuse or carrier voluntary agreements agreeing to such remedial measure.

The genesis for the *Second Further Notice's* point of sale inquiry is in part the NASUCA Petition[39] and certain legal settlement agreements between states Attorneys General and wireless carriers. Those settlements "contain numerous provisions obligating the carriers to disclose material rates and terms of service at the point of sale, whether that is at the carrier's retail location, via the carrier's website, or during a telephone conversation between the carrier and a

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are necessitated by governmental action." (Paragraph 24.) Taking action against these "some carriers" is the more appropriate conclusion to this *Second Further Notice.*

[36] This responds to the Commission's inquiry in the *Second Further Notice*, 20 FCC Rcd at 6473 ¶ 48.

[37] *Id.* at 6476-78 ¶¶ 55-57.

[38] Qwest's local service representative (inbound calling) supporting software is currently designed so that Qwest can provide to the customer a point of sale disclosure identifying: (a) the non-recurring (one time) charges; (b) the monthly recurring charge; (c) any carrier-imposed charges/fees; and (d) an estimate of the governmental taxes and surcharges.

[39] NASUCA Petition at 7-8, 10-11.

consumer."[40] The *Second Further Notice* then tentatively concludes that similar point of sale disclosure requirements should apply "nationwide to all carriers."[41]

The *Second Further Notice* does not detail the reasoning behind the proposal to extend litigation-based, private settlement terms on an entire communications industry without any showing of culpability. But it seeks comment on whether the consent decrees between the states Attorney Generals and certain wireless carriers "establish an appropriate framework for any point of sale disclosure rules."[42] From Qwest's perspective, the state consent decrees do not establish an appropriate framework for promulgating rules across an entire industry absent any individual allegation (let alone showing) of culpability. The Commission should not use the decrees as a this model for imposing general rules across the industry. Rather, in a vein similar to that of the consent decree, the Commission should act only in the face of evidence similar to that amassed by the Attorneys General against specific carriers and a finding of harm to the public.

IV. CONCLUSION

For the foregoing reasons, the Commission should refrain from regulating the format and wording of carriers' bills more heavily than it currently does, and should not adopt its proposals requiring the creation of a "government-mandated charge" sections in the bill or standardizing the content of line items. Bills are the primary and most important communication between a carrier and its customers, and should be free of government regulations specifying a particular design, format, segmentation and content except in extreme situations. Instead of a rigid,

[40] *Second Further Notice*, 20 FCC Rcd at 6476-77 ¶ 55.

[41] *Id.* Carriers would be expected to "disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale." *Id.*

[42] *Id.* at 6477 ¶ 56.

prescriptive approach that will burden carriers' communications with their customers, the Commission should instead address unjust and unreasonable billing practices by carriers through targeted enforcement actions under its existing standards. This approach will preserve the flexibility of the current system and preserve the commercial speech rights of carriers while preventing abuses.

Respectfully submitted,

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June 24, 2005

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST CORPORATION, QWEST COMMUNICATIONS CORPORATION, QWEST LD CORP. AND QWEST WIRELESS LLC** to be filed with the FCC via its Electronic Comment Filing System in CC Docket No. 98-170 and CG Docket No. 04-208, and served, via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com,

Richard Grozier
Richard Grozier

June 24, 2005